



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

DEC 31 2008

200913071

Uniform Issue List: 408.03-00

SET:EP:RA:T1

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

Legend:

Taxpayer A

= \*\*\*\*\*  
\*\*\*\*\*

Taxpayer B

= \*\*\*\*\*  
\*\*\*\*\*

Financial Institution C

= \*\*\*\*\*

IRA D

= \*\*\*\*\*  
\*\*\*\*\*

Account E

= \*\*\*\*\*  
\*\*\*\*\*

Officer F

= \*\*\*\*\*

Amount 1

= \*\*\*\*\*

Amount 2

= \*\*\*\*\*

Amount 3

= \*\*\*\*\*

Amount 4

= \*\*\*\*\*

Amount 5

= \*\*\*\*\*

Amount 6

= \*\*\*\*\*

200913071

Dear \*\*\*\*\*:

This letter is in response to a request for a letter ruling, dated \*\*\*\*\* and supplemented by additional correspondence dated \*\*\*\*\* in which your authorized representative requests, on your behalf, a waiver of the 60-day rollover requirement contained in section 408(d)(3) and of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling request:

Taxpayer A, age \*\*, is the surviving spouse of Taxpayer B who died on \*\*\*\*\* at the age of \*\*. At the time of his death, Taxpayer B was the owner of IRA D, an individual retirement arrangement ("IRA") maintained with Financial Institution C. IRA D was in pay status; in \*\*\*\*, Taxpayer B received a distribution of Amount 6 from IRA D. Taxpayer A was Taxpayer B's sole named beneficiary of IRA D.

On or about \*\*\*\*\* Taxpayer A sought the advice of Officer F of Financial Institution C with respect to IRA D. To this end, Officer F met with Taxpayer A. Officer F admits that Taxpayer A seemed confused at the time of the meeting and did not know what she could do with her husband's individual retirement account. Taxpayer A alleges that Officer F told her that she would be required to withdraw the balance of the decedent's IRA. Officer F admits that during her meeting with Taxpayer A, there was no discussion of the rollover option or any other options available to Taxpayer A, such as: (1) the option of a spousal rollover of Amount 1, (2) the option of her treating her deceased husband's IRA as her own, or (3) the option of Taxpayer A continuing to receive payments under the distribution schedule established by her spouse before he died. After her meeting with bank Officer F, Taxpayer A withdrew the entire balance (Amount 1) from IRA D, and deposited Amount 3 (Amount 1, minus Amount 2 which was withheld for payment of taxes) into Account E, a nonqualified certificate of deposit established at Financial Institution C.

Taxpayer A did not learn about the spousal options regarding her deceased husband's IRA until \*\*\*\*\* when she contacted an accountant to help her file her \*\*\*\* income taxes. By that time the 60-day time limit, allowed under section 408(d)(3) of the Code for Taxpayer A to complete a rollover of all or a portion of Amount 1 into her own IRA, had expired.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code in this instance with respect to the Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(i) of the Code.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish timely rollovers was caused by errors and omissions committed by the representative of Financial Institution C, in particular the omissions of Officer F while providing IRA information and advice to Taxpayer A, who was relying on Officer F's expertise in these matters.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute all or a portion of Amount 1 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1, or the portion of Amount 1 that is rolled over, will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by sections 408(d)(3)(E) and 401(a)(9) of the Code.

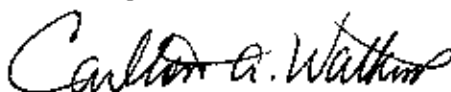
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please address all correspondence to  
SE:T:EP:RA:T1.

Sincerely,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1